

AMENDED IN ASSEMBLY APRIL 20, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 878

Introduced by Assembly Member Chavez

February 18, 2005

An act to amend Section 2225 of the Civil Code, relating to felonies, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 878, as amended, Chavez. Felonies: profits.

Existing statutory law, held unconstitutional by the California Supreme Court, imposes a trust upon the proceeds and profits from the preparation for sale, the sale of rights to, or the sale of materials that include, or are based on the story of, a crime for which a felon was convicted. That trust is held for the benefit of victims of crime.

This bill would instead impose a trust upon all ~~proceeds and profits or assets~~ gained by a convicted felon ~~from the preparation for sale, the sale of rights to, or the sale of materials, related to a~~ *that are a byproduct of the* felony for which that felon was convicted, and upon ~~50% of the proceeds or all of the profits or assets~~ gained by any other person, other than a victim. ~~The bill would define "materials" for purposes of the bill, and would state that it does not apply to materials that make only a passing reference to, or mention of, the crime.~~ Any money in the trust that is not claimed by a beneficiary of the trust after a specified time period would be allocated to the Restitution Fund.

Because the bill would expand the source of deposits into the Restitution Fund, a continuously appropriated fund, the bill would make an appropriation.

Under existing law, any violation of an order of a court made pursuant to these provisions is punishable as contempt.

Because the bill would expand the class of persons and types of materials to which these provisions would apply, it would expand the scope of a crime and thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature declares that a victim should be
2 compensated for any and all displacements or incurrences
3 because of a crime committed against him or her, and that no
4 convicted criminal should reap any financial benefit from
5 committing a crime.

6 SEC. 2. Section 2225 of the Civil Code is amended to read:

7 2225. (a) As used in this section:

8 (1) "Convicted felon" means any person convicted of a felony,
9 or found not guilty by reason of insanity of a felony committed in
10 California, either by a court or jury trial or by entry of a plea in
11 court.

12 (2) "Felony" means a felony defined by any California or
13 United States statute.

14 (3) (A) "Representative of the felon" means any person or
15 entity receiving ~~proceeds or profits~~ *profits or assets* by
16 designation of that felon, on behalf of that felon, or in the stead
17 of that felon, whether by the felon's designation or by operation
18 of law.

19 (B) "Profiteer of the felony" means any person other than a
20 victim, as defined in paragraph (4), who sells or transfers for
21 profit any property or thing of the felon, ~~or any materials, as~~
22 ~~defined in paragraph (6),~~ the value of which is enhanced by the
23 notoriety gained from the commission of the felony for which the
24 felon was convicted. This subparagraph does not apply to any
25 media entity reporting on the felon's ~~story or on the sale of the~~
26 ~~materials, memorabilia, or other property or thing of the felon, or~~

1 ~~to the sale of materials where the seller is exercising his or her~~
2 ~~first amendment rights. This subparagraph also does not apply to~~
3 ~~the sale or transfer by a profiteer of any other expressive work~~
4 ~~protected by the First Amendment unless the sale or transfer is~~
5 ~~primarily for a commercial or speculative purpose. *crime or on*~~
6 ~~*the sale of any property or thing of the felon.*~~

7 (4) (A) “Victim” means a person who, under applicable law,
8 other than the provisions of this section, has or had a right to
9 recover damages from the convicted felon for physical, mental,
10 or emotional injury, or pecuniary loss proximately caused by the
11 convicted felon as a result of the crime for which the felon was
12 convicted.

13 (B) If a victim described in subparagraph (A) has died,
14 “victim” also includes a person or estate entitled to recover
15 damages pursuant to Chapter 4 (commencing with Section
16 377.10) of Title 3 of Part 2 of the Code of Civil Procedure.

17 (C) If a person has died and the death was proximately caused
18 by the convicted felon as a result of the crime for which the felon
19 was convicted, “victim” also includes a person described in
20 Section 377.60 of the Code of Civil Procedure and any
21 beneficiary of a will of the decedent who had a right under that
22 will to receive more than 25 percent of the value of the estate of
23 the decedent.

24 (5) “Victim’s interest” means that portion of the proceeds or
25 profits necessary to pay the following:

26 (A) In the case of a victim described in subparagraph (A) or
27 (B) of paragraph (4), those damages that, under applicable law,
28 other than the provisions of this section, the victim has or had a
29 right to recover from the convicted felon for injuries proximately
30 caused by the convicted felon as a result of the crime for which
31 the felon was convicted.

32 (B) In the case of a victim described in subparagraph (C) of
33 paragraph (4), those damages that, under all the circumstances of
34 the case, may be just.

35 (C) A victim’s interest shall be reduced by the following
36 amount:

37 (i) Money paid to the victim from the Restitution Fund
38 because of the crime for which the felon was convicted.

1 (ii) Money paid to the victim by the convicted felon because
2 of a requirement of restitution imposed by a court in connection
3 with the crime for which the felon was convicted.

4 (iii) Money paid to the victim because of a judgment against
5 the convicted felon based upon the crime for which the felon was
6 convicted.

7 (D) In the case of an unsatisfied existing judgment or order of
8 restitution against the convicted felon and in favor of a victim,
9 any money paid to the victim pursuant to this section shall be
10 applied to reduce the amount of the unsatisfied judgment or
11 order.

12 ~~(6) "Materials" means books, magazine or newspaper articles,~~
13 ~~movies, films, videotapes, sound recordings, propaganda,~~
14 ~~memorabilia, interviews or appearances on television and radio~~
15 ~~stations, and live presentations, the value of which is enhanced~~
16 ~~by the notoriety gained from the commission of a felony for~~
17 ~~which a convicted felon was convicted.~~

18 ~~(7)–~~

19 (6) "Sale" includes lease, license, or any other transfer or
20 alienation taking place in California or elsewhere.

21 ~~(8) "Proceeds" means all fees, royalties, real property, or other~~
22 ~~consideration of any and every kind or nature received by or~~
23 ~~owing to a felon or his or her representatives, or profiteer of the~~
24 ~~felony, for the preparation for the purpose of sale of materials,~~
25 ~~for the sale of the rights to materials, or the sale or distribution by~~
26 ~~the person of materials whether earned, accrued, or paid before or~~
27 ~~after the conviction. It includes any interest, earnings, or~~
28 ~~accretions upon proceeds, and any property received in exchange~~
29 ~~for proceeds.~~

30 ~~(9) "Profits" means all income from anything sold or~~
31 ~~transferred by the felon, a representative of the felon, or a~~
32 ~~profiteer of the felony, including any right, the value of which~~
33 ~~thing or right is enhanced by the notoriety gained from the~~
34 ~~commission of a felony for which a convicted felon was~~

35 (7) "Profits" means all income or assets gained from the
36 commission of a felony, including any income or assets gained
37 from the notoriety associated with the felony for which a
38 convicted felon was convicted. This income may have been
39 accrued, earned, or paid before or after the conviction. However,
40 voluntary donations or contributions to a defendant to assist in

the defense of criminal charges shall not be deemed to be “profits,” provided the donation or contribution to that defense is not given in exchange for some material of value.

~~(b) (1) All proceeds or profits gained by a convicted felon from the preparation for the purpose of sale, the sale of the rights to, or the sale of materials related to a felony for which that convicted felon was convicted, and 50 percent of all proceeds or profits gained by any profiteer of a felony who is not a convicted felon, shall be subject to an involuntary trust for the benefit of the victims set forth in this section. That trust shall continue until five years after the time of payment of the proceeds to the felon or five years after the date of conviction, whichever is later. If an action is filed by a victim to recover his or her interest in a trust within those time limitations, the trust character of the property shall continue until the conclusion of the action. At the end of the five-year trust period, any proceeds that remain in trust that have not been claimed by a victim shall be transferred to the Controller, to be allocated to the Restitution Fund for the payment of claims pursuant to Chapter 5 (commencing with Section 13950) of Division 3 of Title 2 of the Government Code.~~

~~(2) Notwithstanding paragraph (1), in the case of a sale or transfer by a profiteer of the felony, the court in an action under subdivision (c) shall, upon an adequate showing by the profiteer of the felony, exclude from the involuntary trust that portion of the profits that represents the inherent value of the memorabilia, property, or thing sold or transferred and exclusive of the amount of the enhancement to the value due to the notoriety of the convicted felon.~~

~~(3) This subdivision does not apply to materials that make only a passing reference to, or mention of, the felony in question.~~

(b) (1) All profits or assets gained by a convicted felon, that are a byproduct of the felony for which the felon was convicted, shall be subject to an involuntary trust for the benefit of victims, as set forth in paragraph (3).

(2) All profits or assets gained by any profiteer of a felony shall be subject to an involuntary trust for the benefit of victims, as set forth in paragraph (3).

(3) An involuntary trust created under paragraph (1) or (2) shall continue in existence until the later of the following events:

1 (A) Five years after a felon or profiteer of a felony last
2 obtained any profits or assets associated with that felony.

3 (B) The conclusion of any action filed by a victim within the
4 time limitations specified in subparagraph (A) to recover his or
5 her interest in the trust.

6 (4) At the end of the trust period as specified in paragraph (3),
7 any remaining trust funds that have not been claimed by a victim
8 shall be transferred to the Controller, to be allocated to the
9 Restitution Fund for the payment of claims pursuant to Chapter 5
10 (commencing with Section 13950) of Division 3 of Title 2 of the
11 Government Code.

12 (c) Any victim may bring an action against a convicted felon,
13 representative of the felon, or a profiteer of a felony to recover
14 his or her interest in the trust established by this section.

15 That action may be brought in the superior court of the county
16 in which the victim resides, or of the county in which the
17 convicted felon resides, or of the county in which ~~proceeds or~~
18 ~~profits~~ profits or assets are located.

19 If the court determines that a victim is entitled to ~~proceeds or~~
20 ~~profits~~ profits and assets pursuant to this section, the court shall
21 order the payment from ~~proceeds or profits~~ profits and assets that
22 have been received, and, if that is insufficient, from ~~proceeds or~~
23 ~~profits~~ profits or assets that may be received in the future.

24 (d) If there are two or more victims and if the available
25 ~~proceeds or profits~~ profits and assets are insufficient to pay all
26 victims, the ~~proceeds or profits~~ profits and assets shall be
27 equitably apportioned among the victims taking into account the
28 impact of the crime upon them.

29 Prior to any distribution of any proceeds to a victim, the court
30 shall determine whether the convicted felon has failed to pay any
31 portion of a restitution fine or penalty fine imposed by a court, or
32 any restitution imposed as a condition of probation. The court
33 shall also determine whether the convicted felon is obligated to
34 reimburse a governmental entity for the costs of his or her
35 defense and whether a portion of the proceeds is needed to cover
36 his or her reasonable attorney's fees incurred in the criminal
37 proceeding related to the felony, or any appeal or other related
38 proceeding, or in the defense of the action brought under this
39 section. The court shall order payment of these obligations prior
40 to any payment to a beneficiary, except that 60 percent of the

1 ~~proceeds or profits~~ *profits or assets* shall be reserved for payment
2 to the beneficiaries.

3 (e) (1) The Attorney General may bring an action to require
4 ~~proceeds or profits~~ *profits or assets* received by a convicted felon
5 to be held in an express trust in a bank authorized to act as a
6 trustee.

7 (2) An action may be brought under this subdivision within
8 one year after the receipt of ~~proceeds or profits~~ *profits or assets*
9 by a convicted felon or one year after the date of conviction,
10 whichever is later.

11 That action may be brought in the superior court of any county
12 in which the Attorney General has an office.

13 ~~(3) If the Attorney General proves that the proceeds or profits~~
14 ~~are proceeds or profits from the sale of any material or thing of~~
15 ~~value that are subject to an involuntary trust pursuant to~~

16 (3) *If the Attorney General proves that the profits or assets are*
17 *profits and assets resulting from the commission of the felony*
18 *and therefore subject to an involuntary trust pursuant to this*
19 *section, and that it is more probable than not that there are*
20 *victims within the meaning of this section, the court shall order*
21 *that all* ~~proceeds or profits~~ *profits and assets* *be deposited in a*
22 *bank and held by the bank as trustee of the trust until an order of*
23 *disposition is made by a court pursuant to subdivision (d), or*
24 *until the expiration of the period specified in subdivision (b).*

25 (4) If the Attorney General prevails in an action under this
26 subdivision, the court shall order the payment from the ~~proceeds~~
27 ~~or profits~~ *profits or assets* to the Attorney General of reasonable
28 costs and attorney's fees.

29 (f) (1) In any action brought pursuant to this section, upon
30 motion of a party the court shall grant a preliminary injunction to
31 prevent any waste of ~~proceeds or profits~~ *if it appears that the*
32 ~~proceeds or profits~~ *any profits or assets* are subject to the
33 provisions of this section, and that they may be subject to waste.

34 (2) Upon motion of the Attorney General or any potential
35 victim, the court shall grant a preliminary injunction against a
36 person against whom an indictment or information for a felony
37 has been filed in superior court to prevent any waste of ~~proceeds~~
38 ~~or profits~~ *profits or assets* if there is probable cause to believe
39 that the ~~proceeds or profits~~ *profits or assets* would be subject to

1 an involuntary trust pursuant to this section upon conviction of
2 this person, and that they may be subject to waste.

3 (g) Any violation of an order of a court made pursuant to this
4 section shall be punishable as contempt.

5 (h) The remedies provided by this section are in addition to
6 other remedies provided by law.

7 No period of limitations, except those provided by this section,
8 shall limit the right of recovery under this section.

9 SEC. 3. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the
14 penalty for a crime or infraction, within the meaning of Section
15 17556 of the Government Code, or changes the definition of a
16 crime within the meaning of Section 6 of Article XIII B of the
17 California Constitution.